

IN THE MATTER OF APPLICATION  
NUMBER 55-77 (a17875)

## MEMORANDUM DECISION

Change Application Number 55-77 (a17875) was filed by Caleb Limited Partnership (present owner) and Central Utah Water Conservancy District (future owner) on March 3, 1994, to change the point of diversion, place and nature of use of 5.0 cfs., not to exceed 1,374.92 acre-feet of water annually, as evidenced by Application Number 55-77 (A4306a, a292, a429, a985, Certificate Number 1310). The water was diverted from the Provo River at a location South 2117 feet and East 373 feet from the NW Corner of Section 7, T6S, R3E, SLB&M. Historically, the water was used to irrigate 343.73 acres of land.

Now, it is proposed to divert the 5.0 cfs., not to exceed 1,374.92 acre-feet annually, at these sites: (1) Utah Lake, South 1282 feet and West 17 feet from the N1/4 Corner of Section 25, T5S, R1W, SLB&M; (2) Provo River (Olmsted Flow Line), North 578 feet and East 1370 feet from the South 1/4 Corner of Section 27, T5S, R3E, SLB&M; (3) Deer Creek Reservoir (Salt Lake Aqueduct), South 147 feet and West 189 feet from the NE Corner of Section 7, 5S, R4E, SLB&M; (4) Provo River (Murdock Diversion Dam), South 621 feet and West 913 feet from the E1/4 Corner of Section 6, T6S, R3E, SLB&M, the water will be stored in Utah Lake. Utilization of the water would be for municipal purposes within the Central Utah Water Conservancy District and other purposes related to the Central Utah Project.

The change application was published in The Daily Herald from March 17, 1994, to March 31, 1994. Protests were filed by the Provo River Water Users Association, Metropolitan Water District of Salt Lake City and Geneva Steel. Respective concerns of these three parties are:

- (1) The change application is based on a water right which is predicated upon the availability of water from the Olmsted Power Plant tailrace in excess of the quantity that can be diverted into the Provo Bench Canal under the Blue Cliff right for use by the Provo Reservoir Water Users Company. After the Olmsted Plant ceased operation in 1986, the Company can divert its Blue Cliff right upstream at the Murdock Dam; hence, there is no excess water available at the tailrace to satisfy the underlying right of the change application. This change application could impair the rights of Provo River Water Users Association. If the change application is implemented, diversion of water should be restricted to historic consumptive uses.
- (2) Delivery of water through the Salt Lake Aqueduct should be pursuant to an agreement dated February 7, 1990, and expiring on December 31, 2002, between the Salt Lake County Water Conservancy District and the Metropolitan Water District of Salt Lake City.
- (3) Geneva Steel's water right will be impaired unless diversion of water under the change application is limited to that quantity actually consumed heretofore and adjustments are made for such factors as seepage losses, evaporation losses and reduced carrier water.

A hearing regarding the protests was not conducted. Provo River Water Users

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Association's protest addresses essentially the same issues that it did in its protest to Temporary Change Application Number 55-77 (t90-55-16). These issues were considered extensively at a hearing held on April 12, 1990, at Provo, Utah, regarding the temporary change application. Furthermore, the Olmsted Power Plant resumed operation on March 18, 1991, which would seem to mitigate much of the concern expressed in the protest. A hearing was not requested by the Metropolitan Water District of Salt Lake City; it only wanted implementation of the change application to conform to a certain agreement. Geneva Steel withdrew its hearing request in a letter dated August 9, 1994.

The State Engineer has reviewed the change application and noted that historic use of water for irrigation produced a return flow to Utah Lake. The future place of use encompasses such a broad area that the State Engineer has no assurance of how much, if any, return flow there will be to the lake. Consequently, the State Engineer believes that the only quantity of water which can be allowed to be diverted under the change application is that which was depleted historically from the hydrologic regimen. The quantities and irrigated acreage awarded in the Provo River Decree, (Civil Number 2888), studies by the U.S. Geological Survey, and records of water deliveries for irrigation indicate that irrigation efficiency in the Provo-Orem area is approximately 40 percent, i.e., 40 percent of the water diverted for irrigation is consumptive, and 60 percent is return flow. The U.S. Geological Survey has estimated the seepage loss in the Provo Bench Canal to be approximately six percent of the total diversion out of the Provo River.

Therefore, it is **ORDERED** and Change Application Number is hereby **APPROVED** subject to all prior rights and the following conditions:

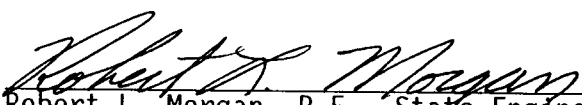
1. The State Engineer and/or the Provo River Commissioner shall determine at all requisite times the quantity of water in cubic feet per second that would be available at the tailrace of the Olmsted Power Plant if water were used as historically under Water Right Number 55-77 (Certificate Number 1310). Should a measuring device be required, this shall be installed by the applicants. Of this amount, only 40 percent shall be diverted under the change application. Six percent shall be available during the irrigation season for diversion into the Provo Bench Canal as the applicants' share of seepage loss.
2. When the applicants are diverting water from Utah Lake, they and the Provo River Commissioner shall coordinate this diversion with the Utah Lake and Jordan River Commissioner. All water diverted under the change application shall be reported by the Provo River Commissioner in his annual report to the State Engineer.
3. Any additional costs incurred by the Provo River Commissioner and the Utah Lake and Jordan River Commissioner in the administration of the change application shall be borne by the applicants. The amount of such costs shall be determined by the commissioners and/or the State Engineer.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the

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State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 17th day of May, 1995.

  
Robert L. Morgan, P.E., State Engineer

RLM:JER:mw

Mailed a copy of the foregoing Memorandum Decision this 17th day of May, 1995, to:

Stanley H. Roberts, Jr.  
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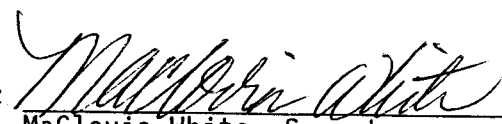
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BY:   
Maclovio White, Secretary